

1 MAUREEN E. MCCLAIN (State Bar No. 062050)
Email: mcclain@kmm.com
2 ALEX HERNAEZ (State Bar No. 201441)
Email: hernaez@kmm.com
3 KAUFF MCCLAIN & MCGUIRE LLP
One Post Street, Suite 2600
4 San Francisco, California 94104
Telephone: (415) 421-3111
5 Facsimile: (415) 421-0938

6 Attorneys for Defendant
ALTA BATES SUMMIT MEDICAL CENTER
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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
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12 COYNESS L. ENNIX, JR., M.D.,

13 Plaintiff,

14 v.

15 ALTA BATES SUMMIT MEDICAL CENTER,

16 Defendant.
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CASE NO. C 07-2486 WHA

**DEFENDANT'S OBJECTIONS TO
PLAINTIFF'S EVIDENCE**

DATE: June 2, 2008
TIME: 7:30 a.m.
DEPT: Ctrm. 9, 19th Flr.
JUDGE: Hon. William H. Alsup

COMPLAINT FILED: May 9, 2007
TRIAL DATE: June 2, 2008

A. Objections to Plaintiff's Case-in-Chief Witnesses.

Number on Plaintiff's List	Witness Name	Objection
2	William Weintraub, M.D.	Def's MIL No. 5. Not relevant as not presented in the peer review process, cumulative. FRE 402, 403.
3	Alex Zapolanski, M.D.	Def's MIL No. 5. Not relevant as not presented in the peer review process, cumulative. FRE 402, 403.
5	Margo Leahy, M.D.	Def's MIL No. 7. FRE 702, 403.
12	Harry Shulman	Not disclosed in Initial Disclosures. FRCP 37 c. Impingement on Attorney-Client Privilege (Mr. Shulman is the Medical Staff's lawyer).
14	Jai Balkissoon, M.D.	Def's MIL No. 8. FRE 402, 403.
15	Albertine Omani, M.D. ¹	Def's MIL No. 8. FRE 402, 403.
16	Coletta Hargis, M.D.	Def's MIL No. 8. FRE 402, 403.
17	Tracy Phillips, M.D.	Def's MIL No. 8. FRE 402, 403.
19	Filberto Burciaga ²	Not disclosed. Not relevant. FRCP 37c. FRE 402, 403. Improper opinion testimony. FRE 701. This patient (as well as ensuing patients on the list) is not qualified to testify as to whether Dr. Ennix documented consent and/or provided appropriate medical care in accordance with Medical Staff requirements.
21	Makalita Leao	Not disclosed. FRCP 37c. Not relevant. Improper opinion. FRE 402, 403, 701.
22	Alice Ashton	Not disclosed. Not relevant. Improper opinion. FRCP 37c. FRE 402, 403, 701.
23	Donald Aissa	Not disclosed. Not relevant. Improper opinion. FRCP 37c. FRE 402, 403, 701.

¹ Drs. Omani, Hargis and Phillips are OB/GYN doctors who underwent a peer review process with the Alta Bates Medical Staff. There is no arguable connection between their situations and Ennix except that they are African-American, and presumably wish to provide inadmissible testimony that they believe they were subject to race discrimination.

² Filberto Burciaga, Makalita Leao, Alice Ashton, Donald Aissa, Jessie Lozano, Esther Huitron and Jean Tenret are all cardiac patients.

Number on Plaintiff's List	Witness Name	Objection
24	Jessie Lozano	Not disclosed until 1/24/08. Not relevant. Improper opinion. FRCP 37c. FRE 402, 403, 701.
25	Esther Huitron	Not disclosed until 1/24/08. Not relevant. Improper opinion. FRCP 37c. FRE 402, 403, 701.
26	Jean Tenret	Not disclosed until 1/24/08. Not relevant. Improper opinion. FRCP 37c. FRE 402, 403, 701.
27	Joe Bermudas (sic) ³	FRE 402, 403, 701. As to Bermudez and the ensuing doctors, improper opinion testimony that he believes Ennix to have been a good doctor.
28	Dennis Drew	FRE 402, 403, 701.
29	Rollington Ferguson	FRE 402, 403, 701.
30	Dhun Sethna	FRE 402, 403, 701.
31	Gregory Quinn	FRE 402, 403, 701.
32	General Hilliard	FRE 402, 403, 701.

B. Defendant's Objections to Plaintiff's Exhibits.

Number on Plaintiff's list	Description	Basis for Objection
201	Summit Medical Staff Partial Racial Composition 2004-2006.	Def's MIL No. 3. FRE 702, 403.
202	Summit Medical Staff Physician Rosters 2004-2006. D 5124-5211	Relevancy. Jury confusion. Def's MIL No. 3. FRE 702, 402, 403
203	Chart Prepared by Plaintiff's Lawyers re Minority Staff Composition.	Def's MIL No. 3. FRE 702, 403
204	Chart Prepared by Plaintiff's Lawyer MEC Review by Race.	Def's MIL No. 3. FRE 702, 403.

³ Drs. Bermudez, Drew, Ferguson, Sethna, Quinn, Hilliard are doctors whose testimony will either be cumulative of letters they provided to the peer review process or improper opinion evidence.

Number on Plaintiff's list	Description	Basis for Objection
205	Chart Prepared by Plaintiff's Lawyer Disciplined Doctors by Race.	Def's MIL No. 3. FRE 702, 403.
206	Chart Prepared by Plaintiff's Lawyer MEC Review by Race.	Def's MIL No. 3. FRE 702, 403.
207	Chart Prepared by Plaintiff's Lawyer. MEC Review by Race.	Def's MIL No. 3. FRE 702, 403.
208	2/13/05 letter Khan to Isenberg. D 4474	Hearsay if offered for the truth of the matter asserted. FRE 801.
210	2003-2004 CABG Outcomes.	Def's MIL No. 4. FRE 402, 403.
212	Def's Responses to Plaintiff's First Set of Special Interrogatories.	Hearsay. FRE 801. Undue jury confusion. FRE 403.
213	ABSMC Responses to Plaintiff's Second Request for Document Production.	Hearsay. FRE 801. Undue jury confusion. FRE 403.
214	4/26/06 e-mail exchange Jellin/ Horn. D 4793	Hearsay. FRE 801.
221	11/29/04 letter Girard to Isenberg. D 4404	Hearsay if offered for the truth of the matter asserted. FRE 801
222	12/2/04 letter Durzinsky to Stanten. D 4389	Hearsay if offered for the truth of the matter asserted. FRE 801.
223	11/28/04 letter Estrich to Paxton. D 4382-3	Hearsay if offered for the truth of the matter asserted. FRE 801.
224	11/30/04 letter Drew to Isenberg. D 4384	Hearsay if offered for the truth of the matter asserted. FRE 801.
225	11/30/04 letter Holloway to Isenberg.	Hearsay if offered for the truth of the matter asserted. FRE 801.
226	11/27/04 letter Bermudez to Paxton. D 4387	Hearsay if offered for the truth of the matter asserted. FRE 801.
227	11/26/04 letter Hilliard to Paxton. D 4349	Hearsay if offered for the truth of the matter asserted. FRE 801.
228	11/26/04 letter Edelen to Paxton. D 4380	Hearsay if offered for the truth of the matter asserted. FRE 801.
230	5/31/05 letter Etchevers to Isenberg. D 4625-29	Hearsay. Relevancy. FRE 801, 402.

Number on Plaintiff's list	Description	Basis for Objection
232	8/28/05 letter from Lovin to Paxton. D 4678	Hearsay if offered for the truth of the matter asserted. FRE 801.
242	Medical Charts. E000801-1004, E001430-39, E001668-1821	Patient privacy (HIPAA). Hearsay. Jury confusion. FRE 801, 403.
244	Plaintiff's Damage documents. E 001472-1500, E 002851-84	Object to 1472-1480, 1493-1500 and 2851-84 as the documents contain references to non-recoverable elements of damage, including Plaintiff's fees to oppose peer review and expenses for setting up his office. Hearsay. Relevancy. Undue jury confusion. FRE 801, 402, 403.
267-272	Patient after-the-fact letters re consent.	Hearsay if offered for the truth of the matter asserted. FRE 801.
From Plaintiff's Secondary List		
1	Spiritus CV and Report.	Hearsay. FRE 801.
2	Leahy CV and Report.	Def's MIL No. 7. Hearsay. FRE 702, 801.
3	Greene CV and Report.	Hearsay. FRE 801.
4	Weintraub CV and Report.	Def's MIL No. 5. FRE 402, 403, 801.
5	Zapolinski CV and Report.	Def's MIL No. 5. FRE 402, 403, 801.
6	Barkin CV and Report.	Hearsay if offered to prove the truth of the matter asserted. FRE 801.
7	Shaw CV and Report.	Hearsay if offered to prove the truth of the matter asserted. FRE 801.
8	Reitz CV and Report.	Hearsay if offered to prove the truth of the matter asserted. FRE 801.
9	Walkes CV and Report.	Hearsay if offered to prove the truth of the matter asserted. FRE 801.
10	Lytle CV and Report.	Hearsay if offered to prove the truth of the matter asserted. FRE 801.
11	Rea CV and Report.	Hearsay if offered to prove the truth of the matter asserted. FRE 801.
12	Hill CV and Report.	Hearsay if offered to prove the truth of the matter asserted. FRE 801.

Number on Plaintiff's list	Description	Basis for Objection
13	Omani, et al. Lawsuit.	Hearsay. Relevancy. Undue prejudice. This is a lawsuit (that was settled) involving peer review at a separate campus by a different medical staff involving entirely different issues. FRE 801, 402, 403.
14	Def's Written Discovery.	Not a sufficient description to permit responses.
17	Correspondence from Civil Rights organizations to ABSMC CEO.	Hearsay. Relevancy. Undue prejudice. FRE 801, 402, 403.
20	Correspondence to doctors from Ennix re his new practice.	Hearsay (except for impeachment or admissions). Relevancy. Undue consumption of time. FRE 801, 402, 403.
21	Documentation re Business Expenses in setting up a new office after Plaintiff's voluntary withdrawal from his practice group.	Relevancy. This is not a recoverable damage. FRE 402.
24	Weaver 3/16/05 note.	Hearsay. FRE 801.
33-34	11/12/01 and 2/11/02 SPRC minutes.	Relevancy. FRE 402.
88	Dutt letter and autopsy report.	Hearsay if offered for the truth of the matter asserted. Undue jury confusion. Consumption of time. FRE 801, 403.
89-96	Defendant's Motion Declarations.	Hearsay. FRE 801.
101-104 (Durzinsky letter duplicative of Plaintiff's 222, but misdated here)	12/3/04 Durzinsky and other letters.	Hearsay if offered for the truth of the matter asserted. FRE 801.
110	2/21/07 meeting notes	Covered by Plaintiff's MIL No. 1 (not opposed by Defendant) as this relates to ongoing peer review.
113, 115-175, 178-191, 193, 254	NMA working papers, drafts, e-mail correspondence re chart review process.	Hearsay if offered for the truth of the matter asserted. FRE 801.
199	1/28/08 Vandall letter to Emblidge re discovery issues.	Hearsay. Relevancy. Undue confusion. FRE 801, 402, 403.

Number on Plaintiff's list	Description	Basis for Objection
200-201	NMA bill for the review of a different physician.	Hearsay. Relevancy. Undue consumption of time. FRE 801, 402, 403.
213, 272 (same document)	10/20/05 letter from Ennix to his partners.	Hearsay (except for impeachment). Relevancy. Jury confusion. FRE 801, 402, 403.
215-217	Draft reports, expert bill.	Hearsay. Relevancy. Undue consumption of time. FRE 801, 402, 403.
218	Financial Records.	Duplicative of Plaintiff's Exh. 244. See objections to 244.
220	Patient letter.	Hearsay if offered to prove the truth of the matter asserted. FRE 801.
228, 230-234 (Same exhibit)	5/13/05 CTPRC minutes.	Relevancy. Undue consumption of time. FRE 402, 403.
236	Misidentified document.	Unable to respond.
239-249	Letters of Support.	Hearsay if offered for the truth of the matter asserted. FRE 801.
250-253	Data considered by CT committee	Hearsay. Relevancy. Jury confusion. Undue consumption of time. FRE 402, 403, 801.
255-256	Medical Staff information, identity of cardiac surgeons.	Relevancy. Privacy. FRE 402, 403.
257	Vandall fax to Plaintiff's counsel re Discovery.	Hearsay. Relevancy. Undue prejudice and time consumption. FRE 402, 403, 801.
260	10/14/04 Barkin memo.	Hearsay. Relevancy. Undue consumption of time. FRE 402, 403, 801.
262	March 2007 letter re Diversity Survey.	Hearsay. Relevancy. Undue prejudice and consumption of time. FRE 402, 403, 801.
263	Medical Records from allegedly similar physicians.	Hearsay. Need foundation of similarity before relevancy is established. Undue consumption of time. FRE 402, 403, 801.
266	Physician Group Partnership Agreement.	Hearsay. Relevancy. FRE 402, 801.
299	Ennix's guesses at the racial composition of the staff.	Lack of Foundation. Incomplete. Misleading exhibit. FRE 104, 402, 403.

Number on Plaintiff's list	Description	Basis for Objection
300-302	Supporting letters.	Hearsay if offered for the truth of the matter asserted. FRE 402.

DATED: May 16, 2008

Respectfully submitted,

KAUFF MCCLAIN & MCGUIRE LLP

By: 

MAUREEN E. MCCLAIN

Attorneys for Defendant
ALTA BATES SUMMIT MEDICAL
CENTER

4842-8833-5874.1